

# DVHA Routing Form

Type of Agreement: **Contract** Agreement #: **21446** Form of Agreement: **New** Amendment #: \_\_\_\_\_

Name of Recipient: **GMMB, Inc.** Vendor #: **311008**

Agreement Manager: **Jason Elledge** Phone #: **802-879-9246**

Brief Explanation of Agreement: **Development and implementation of a comprehensive strategy for navigator program design, stakeholder involvement, and strategic public engagement support for the Vermont Health Benefits Exchange.**

Start Date: **2/10/2012** End Date: **11/15/2012** Maximum Amount: **\$669,700.00**

Amendments Only: \_\_\_\_\_ Maximum Prior Amount: \_\_\_\_\_ Percentage of Change: \_\_\_\_\_

Bid Process (Contracts Only): ☒ Standard ☐ Simplified ☐ Sole Source ☐ Statutory ☐ Master Contract SOW

## Funding Source

ACA Exchange 93.525	\$669,700.00	

## Contents of Attached Packet

- ☒ AA-14 ☒ Attachments A, B, C & F ☐ Attachment G - Academic Research  
☐ Sole Source Memo ☐ Attachment D - Modifications to C & F ☐ MOU  
☒ Qualitative/Justification Memo ☐ Attachment E - Business Associate Agreement ☐ Other:

Reviewer	Reviewer Initials	Date In	Date Out
DVHA Grant & Contract Administrator	Kate Jones		2/8
DVHA BO	Carrie Hathaway		
DVHA Commissioner or Designee	Mark Larson, Commissioner		2/9
AHS Attorney General	Seth Steinzor		2/8/12
Following Approvals for Contracts Only:			
AHS CIO			
AHS Central Office	Martha Faber		2/9
AHS Secretary	Doug Racine, Sec		

Vision Account Codes: **\$669,700: 507600/3410010000/22005/41696**

- ☐ Subrecipient Module Entry  
☐ FFATA Entry

Initials & Date \_\_\_\_\_

Vision PO #: **3672**

*Handwritten signature and date:*  
 2/21/12



## STATE OF VERMONT CONTRACT SUMMARY AND CERTIFICATION ----- Form AA-14 (10/18/2010)

Note: All sections are required. Incomplete forms will be returned to department.

CHECK ONLY ONE BOX IF APPLICABLE:

☐ ARRA Contract☒ ACA Contract

## I. CONTRACT INFORMATION:

Agency/Department: AHS/ DVHA

Contract #: 21446

Amendment #:

Vendor Name: GMMB, Inc.

VISION Vendor No: 311008

Vendor Address: 1010 Wisconsin Avenue, Suite 800, Washington, D.C. 20007

Starting Date: 2/10/2012

Ending Date: 11/15/2012

Amendment Date:

Summary of agreement or amendment: Development and implementation of a comprehensive strategy for navigator program design, stakeholder involvement, and strategic public engagement support for the Vermont Health Benefits Exchange.

## II. FINANCIAL INFORMATION

Maximum Payable: \$669,700

Prior Maximum: \$ 0

Prior Contract # (If Renewal):

Current Amendment: \$

Cumulative amendments: \$ 0

% Cumulative Change:

%

Business Unit(s): 3410

VISION Account: 507600

## II. PERFORMANCE INFORMATION

Does this Agreement include Performance Measures tied to Outcomes and/or financial reward/penalties?

☒ Yes☐ NoEstimated  
Funding Split:

G-Fund

%

S-Fund

%

F-Fund 100.00 %

GC-Fund

%

Other

%

## III. PUBLIC COMPETITION

The agency has taken reasonable steps to control the price of the contract or procurement grant and to allow qualified organizations to compete for the work authorized by this contract. The agency has done this through:

☒ Standard bid or RFP☐ Simplified Bid☐ Sole Sourced☐ Qualification Based Selection☐ Statutory

## IV. TYPE OF AGREEMENT &amp; PERFORMANCE INFORMATION

Check all that apply:

☐ Service☒ Personal Service☐ Architect/Engineer☐ Construction☐ Marketing☐ Information Technology☐ Other, describe:

## V. SUITABILITY FOR CONTRACT FOR SERVICE

☒ Yes☐ No☐ n/a

If this is a Personal Service contract, does this agreement meet all 3 parts of the "ABC" definition of independent contractor? (See Bulletin 3.5) If NO, then contractor must be paid through Payroll

## VI. CONFLICT OF INTEREST

By signing below, I certify that no person able to control or influence award of this contract had a pecuniary interest in its award or performance, either personally or through a member of his or her household, family, or business.

☐ Yes☒ No

Is there an "appearance" of a conflict of interest so that a reasonable person may conclude that this party was selected for improper reasons: (If yes, explain)

## VII. PRIOR APPROVALS REQUIRED OR REQUESTED

☒ Yes☐ No

Agreement must be approved by the Attorney General under 3 VSA §311(a)(10) (personal service)

☒ Yes☐ No

I request the Attorney General review this agreement as to form

No, already performed by in-house AAG or counsel: \_\_\_\_\_ (initial)

☐ Yes☒ No

Agreement must be approved by the Comm. of DII; for IT hardware, software or services and Telecommunications over \$100,000

☐ Yes☒ No

Agreement must be approved by the CMO; for Marketing services over \$15,000

☐ Yes☒ No

Agreement must be approved by Comm. Human Resources (privatization and retiree contracts)

☒ Yes☐ No

Agreement must be approved by the Secretary of Administration

## VIII. AGENCY/DEPARTMENT HEAD CERTIFICATION; APPROVAL

I have made reasonable inquiry as to the accuracy of the above information:

2/9/12

Date

Agency / Department Head

2/7/12

Date

Approval by Attorney General

Date

CIO  
(initial)

Date

CMO  
(initial)

2/9/12

Date

Agency Secretary or Other Department Head (if required)

Date

Approved by Commissioner of Human Resources

Date

Secretary of Administration



## MEMORANDUM

**TO:** Doug Racine, Secretary of Agency of Human Services (AHS)  
**FROM:** Mark Larson, Commissioner, Department of Vermont Health Access (DVHA)  
**RE:** GMMB, Inc Contract #21446 Duration: 2/10/2012 – 11/15/2012 Value: \$669,700

This contract is one of several that the Department of Vermont Health Access (DVHA) will execute to assist with the second year of planning, designing, and developing Vermont's Health Benefits Exchange under the Affordable Care Act (ACA). DVHA applied for and received a Level 1 Exchange Establishment Grant from the federal Department of Health and Human Services (HHS) to further its Exchange planning and development efforts.

Under this contract GMMB Inc. will:

- Develop certification criteria for Navigators, differentiating between Navigators serving individuals and those serving small businesses
- Develop a certification process for Navigators
- Develop a training program for Navigators, including a curriculum and training materials
- Develop the RFP and model contract for Navigators
- Assist with Exchange Advisory Group meetings
- Develop a comprehensive outreach and education campaign for the Exchange

DVHA issued an RFP in early October to solicit proposals from vendors for the work described above. Six vendors submitted proposals for work under this section of the RFP. Proposals were reviewed by a team of DVHA managers and representatives from other relevant departments, and team members gave each proposal a score based on previously developed rating criteria. GMMB was selected as the vendor receiving the highest score for this section of the RFP.

The funding for this contract will be covered by the 100% Federal Funding Participation for the term of the contract. This contract complies with all mandatory provisions of AOA Bulletin 3.5. DVHA looks forward to approval of this contract.

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and GMMB, Inc., with a principal place of business in Washington, DC (hereafter called "Contractor"). The Contractor's form of business organization is a C Corporation. The Contractor's local address is 1010 Wisconsin Ave, Suite 800, Washington, DC 20007. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number
2. **Subject Matter.** This is a personal services contract for development and implementation of processes and criteria for certifying and training Vermont Health Insurance Exchange Navigators, and for developing a comprehensive outreach and education program for the Exchange. Detailed services to be provided by the Contractor are described in Attachment A.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$669,700.
4. **Contract Term.** The period of Contractor's performance shall begin on February 10, 2012 and end on November 15, 2012. The State and the Contractor have the option of renewing this contract for up to two (2) one-year extensions.
5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.  
  
Approval by the Attorney General's Office is required.  
Approval by the Secretary of Administration is required.
6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Cancellation.** This contract may be cancelled by either party by giving written notice at least 30 days in advance. Notwithstanding this provision, in the event that federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract with no obligation to pay the Contractor from State revenues.
8. **Attachments.** This contract consists of 23 pages including the following attachments, which are incorporated herein:  
Attachment A - Specifications of Work to be Performed  
Attachment B - Payment Provisions  
Attachment C - Customary State Contract provisions  
Attachment D - Modifications to Attachments C, E & F  
Attachment E - Business Associate Agreement  
Attachment F - Customary Contract Provisions of the Agency of Human Services

The order of precedence of documents shall be as follows:

- 1) This document



## **ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED**

### **General Conditions**

- This Contract is funded by federal grant funding. All terms of this Contract are subject to any requirements necessary to obtain and maintain such funding. No State funds will be used to fund this Contract.
- Lindsey Tucker of DVHA shall serve as the State's primary contact for this Contract. Alison Betty of GMMB Inc. shall serve as the Contractor's primary contact for this Contract. Such contacts may be changed by written notice to the other party.
- The State and the Contractor shall meet weekly, in person or by conference call, to review progress on contract work, the status of specific project activities, identify and discuss outstanding issues, and identify any additional areas for research or follow-up.
- Contractor and the State acknowledge that much of the work performed under this Contract is interrelated with other Exchange development work occurring simultaneously. As such, Contractor and its subcontractors will coordinate with other State contractors as needed to ensure that planning and implementation efforts within each task area inform and complement each other.
- For all deliverables, unless otherwise agreed upon in advance by the State and the Contractor, Contractor will submit a draft deliverable four weeks prior to the final deliverable due date. The State will have one week to provide feedback to the Contractor, after which the Contractor will have one week to submit a revised draft to the State. The State will have one week to review the second draft and provide comments to the Contractor, after which the Contractor will provide the final deliverable within one week of receiving the State's comments. In some situations the State may waive the right to a second draft.
- Work plan deliverables for each section will include tasks, timelines, Contractor task lead, and key Contractor personnel.

### **Introduction**

The State must develop and implement a comprehensive strategy for navigator program design, stakeholder involvement, and strategic public engagement support for the Vermont Health Benefits Exchange (Exchange) for insured and uninsured Vermonters, using a unified campaign with specialized messages for specific populations and broader audiences as established by Vermont's Health Care Reform legislation (Act 48). The ultimate goal is universal coverage for all Vermont citizens.

The federal Affordable Care Act (ACA) and Act 48 establish the foundation for the scope of work to be performed. These laws further the State's health care reform initiatives to improve quality of care, contain cost, and increase access to comprehensive and affordable health care coverage for all Vermonters.

### **A. Navigator Program**

The ACA requires the Exchange to contract with Navigators to educate and assist individuals and small

Navigator Program	
Deliverable	Due Date
Review federal requirements, research existing Navigator programs, and evaluate role of brokers in Vermont	3/14/2012
Stakeholder outreach	3/28/2012
Report on initial stakeholder input and research to date	4/10/2012
Certification criteria	5/23/2012
Certification process	6/13/2012
Training program	8/1/2012
Evaluation plan	8/1/2012
RFP and model contract	8/22/2012

### **B. Stakeholder Consultation**

Act 48 requires the establishment of a Joint Advisory Committee for both Medicaid and the Exchange on July 1, 2012. The current Exchange Advisory Group will continue to meet until the Joint Advisory Committee replaces it. The two advisory groups will meet a total of at least ten times over the course of the next year and will assure program integration goals of both the ACA and Act 48 are met. In addition to these formal meetings, there will be informal stakeholder meetings and public forums scheduled over the course of the year in all regions of the state. Employer meetings will also be held to educate and inform small employers about the Exchange.

To assist the State with Advisory Committee and other public meetings, Contractor will:

- Develop a plan to engage with all stakeholders to build a consensus-driven strategy for disseminating information and key education topics about the Exchange;
- Develop agendas, prepare briefing materials, and provide minutes/summaries for up to 10 Advisory Group meetings, at least six regional public forums, and at least six regional meetings with small businesses
- Schedule meetings and arrange rooms and refreshments for all meetings. Meetings will be scheduled at least a month in advance. Meeting materials will be disseminated at least several days in advance;
- Develop recommendations in key areas, including basic Exchange design, resulting from public input.

### Deliverables:

#### **1. Consult with Stakeholders**

Synthesize learnings from public forums and small business meetings to shape recommendations to the Joint Advisory Committee and other stakeholders as helpful in shaping the Exchange and underscoring the transparency of the State's work with the public.



2. Brand development
3. Outreach and education plan

Stakeholder Consultation	
Deliverable	Due Date
Stakeholder outreach	Ongoing
Benchmark research phone survey results	3/16/2012
Brand assessment	3/16/2012
Name, logo, brand positioning and materials for testing	4/25/2012
8 focus groups to test brand	5/14-18/2012
Mission & vision statements	5/24/2012
Analysis report with recommendations for materials for outreach and education campaign	6/4/2012
Outreach & education plan	7/12/2012
Stakeholder training program	9/13/2012

#### D. Ad Hoc Tasks

Contractor shall perform additional tasks in accordance with the scope of work to be submitted and approved prior to commencement of any additional tasks. Contractor shall submit monthly invoices that include the number of hours worked by staff, as well as a description of the work performed. Contractor shall be reimbursed a single, blended rate of \$214 per hour, inclusive of all travel and other expenses. Contractor will not be reimbursed for other expenses, including travel, supplies, benefits or insurance. A total of 400 hours are authorized for performance of additional work, subject to approved scopes of work.

Fee Schedule	
Deliverable	Amount
Initial Review	\$4,900.00
Stakeholder outreach	\$12,500.00
Report on initial stakeholder input and research to date	\$8,000.00
Certification criteria	\$13,400.00
Certification process	\$10,500.00
Training program	\$19,000.00
Evaluation plan	\$7,500.00
RFP and model contract	\$6,500.00
Agendas, materials and minutes for 10 Joint Advisory Group meetings	\$29,000.00
Agenda, materials and minutes for 6 regional public forums	\$16,000.00
Agenda, materials and minutes for 6 business meetings	\$16,000.00
Synthesis of public input into recommendations for Exchange design	\$13,400.00
Stakeholder outreach	\$15,900.00
Benchmark research phone survey results	\$70,000.00
Brand assessment	\$4,500.00
Name, logo, brand positioning and materials for testing	\$110,000.00
8 focus groups to test brand	\$112,000.00
Mission & vision statements	\$8,000.00
Analysis report - outreach and education campaign	\$31,000.00
Outreach & education plan	\$47,500.00
Stakeholder training program	\$28,500.00
Ad Hoc Tasks (\$214/hr blended rate up to 400 hrs)	\$85,600.00
<b>Total Budget</b>	<b>\$669,700.00</b>



Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

**Workers Compensation:** With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

**General Liability and Property Damage:** With respect to all operations performed under the Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations  
Products and Completed Operations  
Personal Injury Liability  
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence  
\$1,000,000 General Aggregate  
\$1,000,000 Products/Completed Operations Aggregate  
\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

**Automotive Liability:** The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

**Professional Liability:** Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of \$1,000,000 per occurrence, and \$1,000,000 aggregate.

8. **Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and if this Subrecipient expends \$500,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

The Subrecipient may elect to have a program specific audit if it expends funds under only one federal program and the federal program's laws, regulating or grant agreements do not require a financial statement audit of the Party.

A Subrecipient is exempt if the Party expends less than \$500,000 in total federal assistance in one

- b. is under such an obligation and is in good standing with respect to that obligation; or
- c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

15. **Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of his Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

Notwithstanding the foregoing, the State agrees that the Party may assign this agreement, including all of the Party's rights and obligations hereunder, to any successor in interest to the Party arising out of the sale of or reorganization of the Party.

16. **No Gifts or Gratuities:** Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.
17. **Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.
18. **Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs or programs supported in whole or in part by federal funds.



**ATTACHMENT E  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("Agreement") is entered into by and between **the State of Vermont Agency of Human Services operating by and through its Department, Office, or Division of Vermont Health Access** ("Covered Entity") and **GMMB, Inc.** as of **February 10, 2012** ("Effective Date"). This Agreement supplements and is made a part of the Contract to which it is an attachment.

Covered Entity and Business Associate enter into this Agreement to comply with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") including the Standards for the Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164 ("Privacy Rule") and the Security Standards at 45 CFR Parts 160 and 164 ("Security Rule"), as amended by subtitle D of the Health Information Technology for Economic and Clinical Health Act.

The parties agree as follows:

1. **Definitions.** All capitalized terms in this Agreement have the meanings identified in this Agreement, 45 CFR Part 160, or 45 CFR Part 164.

The term "Services" includes all work performed by the Business Associate for or on behalf of Covered Entity that requires the use and/or disclosure of protected health information to perform a business associate function described in 45 CFR 160.103 under the definition of Business Associate.

The term "Individual" includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

The term "Breach" means the acquisition, access, use or disclosure of protected health information (PHI) in a manner not permitted under the HIPAA Privacy Rule, 45 CFR part 164, subpart E, which compromises the security or privacy of the PHI. "Compromises the security or privacy of the PHI" means poses a significant risk of financial, reputational or other harm to the individual.

2. **Permitted and Required Uses/Disclosures of PHI.**

2.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the underlying contract with Covered Entity. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity in that manner. Business Associate may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

2.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents (including subcontractors) in accordance with Sections 8 and 16 or (b) as otherwise permitted by Section 3.

3. **Business Activities.** Business Associate may use PHI received in its capacity as a "Business Associate" to Covered Entity if necessary for Business Associate's proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as "Business Associate" to Covered Entity for Business Associate's proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if (a) Business Associate obtains reasonable written assurances via a written agreement from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person and (b)

the person notifies Business Associate, within three business days (who in turn will notify Covered Entity within three business days after receiving notice of a Breach as specified in Section 5.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the



were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business associate is doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR §164.404(c).

7.4 Business Associate shall notify individuals of Breaches as specified in 45 CFR §164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of Vermont, Business associate shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR §164.406.

8. **Agreements by Third Parties.** Business Associate shall ensure that any agent (including a subcontractor) to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity agrees in a written agreement to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. For example, the written contract must include those restrictions and conditions set forth in Section 14. Business Associate must enter into the written agreement before any use or disclosure of PHI by such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of PHI to any agent without the prior written consent of Covered Entity.
9. **Access to PHI.** Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or as directed by Covered Entity to an Individual to meet the requirements under 45 CFR 164.524. Business Associate shall provide such access in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.
10. **Amendment of PHI.** Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR 164.526, whether at the request of Covered Entity or an Individual. Business Associate shall make such amendments in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.
11. **Accounting of Disclosures.** Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Business Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.
12. **Books and Records.** Subject to the attorney-client and other applicable legal privileges, Business Associate shall make its internal practices, books, and records (including policies and procedures and PHI) relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity upon Covered Entity's request in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.
13. **Termination.**



written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any agent without the prior written consent of Covered Entity.

16.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an agent, including a subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than three (3) business days after it becomes aware of the incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

16.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

**17. Miscellaneous.**

17.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract, the terms of this Agreement shall govern with respect to its subject matter. Otherwise the terms of the Contract continue in effect.

17.2 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.

17.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

17.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule) in construing the meaning and effect of this Agreement.

17.5 As between Business Associate and Covered Entity, Covered Entity owns all PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity.

17.6 Business Associate shall abide by the terms and conditions of this Agreement with respect to all PHI it receives from Covered Entity or creates or receives on behalf of Covered Entity under this Contract even if some of that information relates to specific services for which Business Associate may not be a "Business Associate" of Covered Entity under the Privacy Rule.

17.7 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

**7. Privacy and Security Standards.**

Protected Health Information: The Contractor shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this contract. The Contractor shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

Substance Abuse Treatment Information: The confidentiality of any alcohol and drug abuse treatment information acquired by or provided to the Contractor or subcontractor shall be maintained in compliance with any applicable state or federal laws or regulations and specifically set out in 42 CFR Part 2.

Other Confidential Consumer Information: The Contractor agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to information. The Contractor agrees to comply with any applicable Vermont State Statute, including but not limited to 12 VSA §1612 and any applicable Board of Health confidentiality regulations. The Contractor shall ensure that all of its employees and subcontractors performing services under this agreement understand the sensitive nature of the information that they may have access to and sign an affirmation of understanding regarding the information's confidential and non-public nature.

Social Security numbers: The Contractor agrees to comply with all applicable Vermont State Statutes to assure protection and security of personal information, including protection from identity theft as outlined in Title 9, Vermont Statutes Annotated, Ch. 62.

- 8. Abuse Registry.** The Contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Protection Registry. (See 33 V.S.A. §4919(a)(3) & 33 V.S.A. §6911(c)(3)).
- 9. Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving



Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

The State will not supply e-mail accounts to the Contractor.

13. **Lobbying.** No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.

14. **Non-discrimination.** The Contractor will prohibit discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.

The Contractor will also not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity under Title 9 V.S.A. Chapter 139.

15. **Environmental Tobacco Smoke.** Public Law 103-227, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, child care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds.

The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

Contractors are prohibited from promoting the use of tobacco products for all clients. Facilities supported by state and federal funds are prohibited from making tobacco products available to minors.